

SUMMARY REPORT OF INVESTIGATION
Office of Inspector General Case # 15-0564 (Officer Joseph McElligott)
November 22, 2016

This report consists of a summary of the evidence set out in the attached investigative materials and the Office of Inspector General's (OIG's) analysis of that evidence. An index of the investigative materials is attached.

I. INTRODUCTION

An OIG investigation has established that Joseph McElligott, a police officer for the Chicago Police Department (CPD) who was at the scene when Officer Jason Van Dyke shot Laquan McDonald on October 20, 2014, failed to follow CPD Rules regarding the operation of CPD's in-car video systems. More specifically, and as detailed below, McElligott failed to ensure that his vehicle's in-car video system was capturing audio of the October 20, 2014 shooting. Accordingly, OIG recommends that CPD impose discipline upon McElligott commensurate with the seriousness of his misconduct, his discipline history, and department standards.

II. APPLICABLE RULES, REGULATIONS, AND LAW

A. CPD Rules and Regulations

CPD's Rules and Regulations set out the standards of conduct and duties of sworn members. Article V of the CPD Rules and Regulations, entitled CPD Rules of Conduct (the CPD Rules), sets forth specifically prohibited acts. In pertinent part, the CPD Rules include the following prohibitions:

Rule 6 Disobedience of an order or directive, whether written or oral.

Rule 11 Incompetency or inefficiency in the performance of duty.

B. CPD Special Order S03-05 (effective February 23, 2012 through February 24, 2016)

CPD Special Orders are directives that establish protocols and procedures concerning specific CPD functions, operations, programs, or processes. Special Order S03-05, which was in effect at the time of the shooting, outlines the protocols CPD members are to follow regarding in-car video systems.¹ Section VI of the Special Order provides that at the beginning of their tour of duty, Department members assigned to a CPD vehicle equipped with an in-car video system are to:

- (1) visually inspect the in-car video system equipment for damage;

¹ In-car video systems are also referred to as dash cameras or dashcams in this report.

- (2) obtain the remote transmitter/audio recorder and ensure it is securely attached to the member's person; and
- (3) follow the start-up procedures for the in-car video system as trained and ensure the system is working properly.

The Special Order notes that members are to "immediately notify a supervisor if, at any time, the in-car video system is inoperable, damaged, the equipped vehicle becomes inoperable, or the remote transmitter/audio recorder is missing." During their tour, members are to "audibly and visually record events in accordance with this directive." At the conclusion of a tour of duty, members are to "verify the in-car video system is working properly."

III. JOSEPH MCCELLIGOTT EMPLOYMENT HISTORY

McElligott has worked as a CPD Police Officer since August 27, 2001. McElligott is a member of Fraternal Order of Police (FOP) Lodge 7.

IV. SUMMARY OF INVESTIGATION

A. Procedural History of OIG's Investigation

By letter, dated December 8, 2015, Independent Police Review Authority (IPRA) Acting Chief Administrator Sharon Fairley requested that OIG conduct an administrative investigation "to determine whether certain police officers/witnesses made false statements on official reports prepared in connection with [Van Dyke's shooting of McDonald] and/or during the investigation of the incident."² IPRA further requested that OIG investigate "whether any of the involved Chicago Police officers committed any other violation(s) of Chicago Police Department rules, policies or procedures in their involvement with the incident, including, but not limited to, whether any officers' conduct may have interfered with or obstructed the appropriate investigation and handling of this matter."

Then, by letter, dated January 13, 2016, CPD Interim Superintendent John J. Escalante requested that OIG conduct an "administrative investigation into any and all allegations of police officer misconduct" arising out of the October 20, 2014 shooting death of McDonald. The Superintendent's request asked OIG to investigate the following allegations: "whether any officer(s) made false statements on official reports submitted in connection with the shooting of Laquan McDonald on October 20, 2014; whether any officer(s) obstructed or interfered with the investigation of this incident, either individually or in collusion with others; and whether any officer(s) committed any violation of Chicago Police Department rules, policies, or orders in connection with their response and/or handling of this matter." Escalante attached to the letter request a copy of Sergeant Sandra Soria's Initiation Report, which raises allegations of

² On November 24, 2015, the Cook County State's Attorney charged Van Dyke with a single count of first degree murder in the shooting of McDonald. On December 15, 2015, it subsequently charged him with six counts of murder. OIG has not been involved with any criminal investigation related to the shooting and makes no findings regarding Van Dyke's use of force.

misconduct related to the in-car video systems of the vehicles that were present during the McDonald shooting, and identified that Report as a basis for OIG's administrative investigation.

On March 10, 2016, Kevin Kilmer, Financial Secretary for the FOP, filed a grievance with CPD on behalf of all affected members stating that OIG's attempts to conduct CPD officer interviews violated Article 6 of CPD's Collective Bargaining Agreement (CBA) with the FOP.³ On March 16, 2016, FOP on behalf of all impacted CPD officers filed a "Complaint for Injunction in Aid of Arbitration" in the Circuit Court of Cook County, asking the court to enjoin OIG from conducting interviews until the grievance was decided in arbitration.⁴ The court dismissed the complaint and denied the injunction on March 22, 2016.

OIG's administrative investigation of other CPD employees' actions related to CPD's handling of the McDonald investigation is ongoing. During the course of its investigation, OIG has gathered documents from CPD and IPRA, among other sources, and conducted numerous interviews, including interviews of several CPD personnel who were at or responded to the scene of the shooting and civilian witnesses to the shooting. To date in its ongoing investigation, OIG has recommended disciplinary action against multiple CPD personnel.

B. The Events of October 20, 2014

The following sections detail the shooting of McDonald, as well as the relevant events that occurred directly before and after the shooting.⁵

1. [REDACTED] and Rudy Barillas's Encounter with McDonald⁶

[REDACTED] and [REDACTED] Rudy Barillas, were parking a truck in a lot at 41st Street and Kildare Avenue when [REDACTED] saw a black male, whom she subsequently identified as McDonald, attempting to steal property from certain vehicles parked in the lot. Barillas told McDonald to leave the lot. McDonald responded by making growling noises. After Barillas again told McDonald to leave the lot, McDonald pulled out a knife and swung it at Barillas. Barillas, who

³ Section 6.1, Paragraph I of the CBA states, "If the allegation under investigation indicates a recommendation for separation is probable against the Officer, the Officer will be given the statutory administrative proceeding rights, or if the allegation indicates criminal prosecution is probable against the Officer, the Officer will be given the constitutional rights concerning self-incrimination prior to the commencement of interrogation." CPD General Order GO8-01-01, Paragraph K contains similar language.

⁴ *Fraternal Order of Police, Chicago Lodge 7 v. City of Chicago*, No. 2016 CH 03726 (Cir. Ct. of Cook County, Ill., Mar. 16, 2016).

⁵ On April 22, 2016, OIG obtained maps of the locations that are relevant to the shooting from Google Maps and included those maps in Appendix A. Those maps generally reflect the street layout and location of relevant businesses as they were on the night of October 20, 2014.

⁶ The following account of [REDACTED] and Barillas's encounter with McDonald is taken from the March 16, 2015 case supplementary report (CSR) submitted by CPD Detective David March, which includes the statements that [REDACTED] and Barillas provided to CPD on October 21, 2014, and October 22, 2014, respectively. OIG 15-0564 003077.

had already called 911, then threw his cell phone at McDonald.⁷ McDonald ran from the lot, first northbound on Kildare and then eastbound on 40th Street.

2. Officers Thomas Gaffney and Joseph McElligott's Encounter with McDonald⁸

McElligott and his partner, Officer Thomas Gaffney, received a call over the radio that someone had broken into a truck at 4100 South Kildare and were dispatched to the scene.⁹ Gaffney was driving, and McElligott was in the passenger seat of their assigned vehicle, 815R.¹⁰ When they arrived at 4100 South Kildare, they saw a Hispanic male and female standing by the gate to the truck yard. The two said that a black male wearing a black shirt, later determined to be McDonald, had been trying to steal the radio out of a semi-truck, and had subsequently headed north toward 40th Street.

Gaffney and McElligott drove north on Kildare, turned right onto 40th Street, and saw McDonald walking east on the south side of 40th Street. McElligott exited the vehicle and commanded McDonald to stop and turn around. Gaffney stayed in the vehicle in case McDonald attempted to flee. McElligott ordered McDonald to take his hands out of his pockets. McDonald, who had been facing McElligott, turned and walked away with one hand still in his pocket. McDonald then turned again and took both of his hands out of his pockets. He had a knife in his right hand. McElligott drew his weapon and told McDonald to drop the knife. McDonald started walking east again, going from the sidewalk to the street and back. McElligott

⁷ OEMC recordings reflect that Barillas called 911 at 9:45 p.m. stating that he was holding “a guy right hear [sic] that stolen [sic] the radios” from trucks in a truck yard located at “41st and Kildare.” OIG 15-0564 003227.

⁸ The following account of Gaffney and McElligott’s encounter with McDonald is taken from (1) the audio-recorded statements Gaffney and McElligott provided to IPRA on October 21, 2014, OIG 15-0564 000482-98, 000610-30; and (2) the March 16, 2015 CSR submitted by Detective David March, which includes the statements that Gaffney and McElligott provided to March on the night of the McDonald shooting. OIG 15-0564 003067-69.

⁹ OEMC records reflect that Gaffney and McElligott received the call at 9:47 p.m. OIG 15-0564 003691.

¹⁰ Below is a chart identifying the beat numbers and vehicle numbers of the CPD vehicles that were present when McDonald was shot, along with the names of the officers who were assigned to those vehicles. This SRI refers to the below-referenced vehicles by beat number, unless otherwise specified.

Beat #	Vehicle #	Officers
845R	6412	Officer Joseph Walsh (driver), Officer Van Dyke (passenger)
815R	8489	Officer Gaffney (driver), Officer McElligott (passenger and on foot)
813R	8779	Officer Janet Mondragon (driver), Officer Daphne Sebastian (passenger)
822	8765	Officer Arturo Becerra (driver), Officer Leticia Velez (passenger)
841R	8948	Officer Ricardo Viramontes (driver), Officer Dora Fontaine (passenger)

followed McDonald on foot, shining his flashlight on him, while Gaffney followed in 815R, parallel to McDonald.

As McDonald approached the intersection of 40th and Keeler, Gaffney reported to dispatch that McDonald was walking away with a knife in his hand.¹¹ Gaffney and McElligott continued to follow McDonald as he headed east, with McElligott giving McDonald orders to drop his knife and stop. McDonald kept turning around and giving the officers a “weird glaze[d] look.” Gaffney IPRA Tr. 11:20.¹²

As McDonald approached the intersection of 40th and Karlov, Gaffney turned his car toward McDonald to direct him down Karlov. Gaffney wanted to keep McDonald away from Pulaski, which was a more populated area. McDonald then swung his arm and popped 815R’s right front tire with his knife. McElligott was toward the back of 815R when McDonald popped its tire. After McDonald took a step back from the vehicle, Gaffney pulled up further in front of him to stop him from proceeding to Pulaski. McDonald then hit the right side of 815R’s windshield once with the knife in his right hand. The windshield did not break but, according to Gaffney, McDonald hit it as hard as he could. McDonald walked around the front of 815R and continued eastward on 40th Street. After McDonald had walked 10 to 15 feet, another squad car turned off of Pulaski onto 40th Street with its lights on, and McDonald began to sprint. McElligott followed McDonald on foot, and Gaffney followed McDonald in 815R. McDonald ran eastbound through a parking lot of a Burger King located at 40th and Pulaski and then headed southbound on Pulaski. Video footage from several cameras captured McDonald’s movements as he reached Pulaski.

3. Summary of the Relevant Video Footage

The below table contains a summary of the relevant video footage of the McDonald shooting, which includes the dashcam videos from 813R, 823R, and 845R, video from the “WNE fire exit” security camera from the Greater Chicago Food Depository, which is bordered by 40th Street to the north, Karlov Avenue to the east, and Keeler Avenue to the west, and the security camera video from the Dunkin’ Donuts, located at 4113 South Pulaski Road (the DD Camera).¹³

Time	Event(s) Captured	Source of Video
9:53:17 – 9:54:42	McDonald walks eastbound on the south side sidewalk of 40th Street; a CPD SUV travels east on 40th Street, parallel to McDonald with its front bumper even with	Greater Chicago Food Depository Security Camera

¹¹ OEMC recordings reflect that, at 9:53 p.m., 815R reported: “We’re at 40th and Keeler. This guy uh is walking away from us and he’s got a knife in his hand.” Approximately 30 seconds later, a dispatcher stated, “815R looking for a taser.” See OEMC Documents and CDs; see also OIG 15-0564 003691, 3228.

¹² OIG 15-0564 000620.

¹³ In addition to the videos cited in the summary, OIG obtained video footage from the security camera videos at Burger King and Focal Point, and the dash camera videos from Vehicles 815R and 821R. These videos do not contain footage relevant to this report.

	McDonald; an officer on foot trails directly behind McDonald by the length of the SUV, with his flashlight trained on McDonald. ¹⁴	
9:56:53 – 9:57:01	813R and 845R turn left onto 40th Street from Pulaski.	813R Dashcam
9:57:01– 9:57:09	An unidentified person on 40th Street points the CPD vehicles toward the Burger King parking lot (813R); 845R turns into the parking lot (813R). McDonald runs southeast through the Burger King parking lot out onto Pulaski (845R).	813R Dashcam; 845R Dashcam
9:57:09 – 9:57:20	845R drives over the curb and sidewalk north of Burger King and heads south on Pulaski (845R); 813R turns around, turns right onto 40th Street, and then right again on Pulaski (813R); McDonald runs southbound in the middle of Pulaski and enters the intersection of 41st Street and Pulaski (813R).	813R Dashcam; 845R Dashcam
9:57:20 – 9:57:25	845R, which is facing east/southeast on Pulaski just north of 41st street, turns right behind McDonald and proceeds south on Pulaski on the east side of the street; 845R's passenger door briefly opens and then closes as it passes McDonald on his left; McDonald continues southbound on Pulaski, toward 822, which is stopped in the middle of Pulaski facing north.	813R Dashcam
9:57:25 – 9:57:28	McDonald slows as he approaches 822, touches his hands to his waist, and then, before Walsh and Van Dyke exit 845R and with 822 situated between McDonald and the officers, McDonald extends his right arm fully to his right—the video shows that he has a silver object in his right hand; 845R passes 822 and comes to a stop on the east side of Pulaski, facing south and almost directly south of 822; Van Dyke opens 845R's passenger door.	813R Dashcam
9:57:28 – 9:57:30	McDonald changes course and begins walking southwest on Pulaski, away from 822 and 845R (813R); Van Dyke exits the passenger side of 845R with both of his feet in	813R Dashcam; DD Camera ¹⁵

¹⁴ OIG confirmed the vehicle is 815R and McElligott confirmed in his OIG interview that he was the officer on foot.

¹⁵ The DD Camera video does not display an embedded timestamp. Therefore, OIG used the timestamp of 813R's video, which generally captured the same events as the DD Camera from a different angle, to establish the timeframe of the events captured by the DD Camera.

	Pulaski's northbound left turn lane, his gun drawn and pointed at McDonald (813R). Walsh exits the driver side of 845R, just east of Pulaski's northbound left turn lane, with his gun drawn, and moves north along the driver side of 845R until he is several feet north of 845R (DD Camera).	
9:57:30 – 9:57:33	McDonald continues to walk southwest, from the middle of Pulaski to the lane markers that divide the west side of the road (or approximately one lane west of where McDonald was prior to changing course) (813R). While McDonald walks southwest, Walsh begins moving sideways in a west/southwest direction, approximately parallel to McDonald, and crosses over the east side of Pulaski's northbound left-turn lane—his gun is pointed at McDonald (813R; DD Camera). Van Dyke takes approximately two steps northwest toward McDonald, with his left foot crossing into Pulaski's yellow-painted median strip—his gun is pointed at McDonald (813R; DD Camera). 822 drives north on Pulaski, away from 845R (813R).	813R Dashcam; DD Camera
9:57:33 – 9:57:36	As McDonald approaches the lane markers on the west side of Pulaski, walking in a southwest direction, he looks to his right and moves his right hand behind his waist, near the right side of his lower back, then brings his hand back to his right side (813R). As McDonald crosses the lane markers on the west side of Pulaski, he looks to his left, and takes a step southbound (813R). Meanwhile, Walsh continues moving west/southwest with his gun pointed at McDonald, ultimately traversing almost the entire width of Pulaski's northbound left-turn lane (813R; DD Camera). Van Dyke takes an additional step west, toward McDonald, putting both of his feet in Pulaski's median strip and placing himself almost directly between McDonald and Walsh (813R; DD Camera). McDonald is then apparently shot and Walsh stops moving and adopts a stance, with his feet more than a shoulder's width apart (813R; DD Camera).	813R Dashcam; DD Camera
9:57:36 – 9:57:54	McDonald spins between 180 and 270 degrees in a clockwise direction and then falls to the ground with the top of his head pointing south on Pulaski, approximately one street lane east of Van Dyke and just south of Van Dyke (813R). As McDonald falls to the ground, Van	813R Dashcam; DD Camera

	Dyke takes another step west toward McDonald, moving his right foot from Pulaski's median strip into the south-bound side of Pulaski; his gun remains pointed at McDonald (813R). Van Dyke subsequently takes an additional step or two south, toward McDonald. Other than those steps, Van Dyke's feet are stationary (DD Camera). After McDonald is on the ground, his legs and feet do not move (813R). McDonald's upper body makes small, intermittent movements as what appear to be puffs of smoke rise from McDonald's body (813R). ¹⁶	
9:57:54 – 9:58:05	An officer approaches McDonald and kicks the knife from his hand. McDonald does not make any noticeable movements.	813R Dashcam
9:58:05- 9:58:20	McDonald lies on the ground; no aid is rendered by CPD personnel. 823R, travelling northbound, pulls up on the west side of Pulaski, and stops just south of where McDonald is lying.	813R Dashcam; 823R Dashcam
9:58:20- 9:58:57	Several CPD officers walk and stand near McDonald as he lies on the ground; no aid is rendered by CPD personnel.	813R Dashcam; ¹⁷ 823R Dashcam
9:58:57- 9:59:02	823R begins making a U-turn on Pulaski. A Cook County Sheriff's Police Department (CCSPD) officer puts on blue gloves and walks toward McDonald. ¹⁸ McDonald is no longer visible in the video frame.	823R Dashcam

4. CCSPD Officer Accounts of the October 20, 2014 McDonald Shooting¹⁹

While on patrol on October 20, 2014, CCSPD Officers Adam Murphy and Jeff Pasqua observed several CPD police vehicles pass by them. Both officers decided to follow the CPD vehicles. When they arrived at the scene, several CPD vehicles were already present—Pasqua estimated it was five or six. McDonald was lying on the pavement “gasping for his last breath of air.” Pasqua OIG Tr. 11:22-23. Meanwhile, the CPD officers were “standing around” and talking to

¹⁶ OEMC records show that dispatch received notice to send an ambulance to the scene at 9:57:51. OIG 15-0564 003691.

¹⁷ The last time stamp visible on the 813R dashcam video is 9:58:55.

¹⁸ OIG identified the CCSPD officer as Officer Adam Murphy.

¹⁹ The following CCSPD Officer accounts are taken from OIG’s June 23, 2016 interview of Jeff Pasqua and its June 24, 2015 interview of Adam Murphy. Pasqua and Murphy are currently CCSPD investigators.

each other. Murphy OIG Tr. 11:1. Murphy noted the CPD officers did not respond to him when he asked if they needed assistance. Murphy stated:

I see there's blood all over the pavement. [McDonald] was kind of gurgling when he was sitting there. I remember his mouth was going open and closed like he was trying to gasp for air. And I looked for everybody else, and they were kind of standing there. I just started taking my gloves—my rubber gloves out to check for a pulse and to see if I could render aid.

Murphy OIG Tr. 12:18-13:2. He heard someone say an ambulance was en route.²⁰ Both Officers Murphy and Pasqua recalled then watching McDonald take his final breaths.²¹ It was “[m]aybe less than a minute before [McDonald] expired.” Murphy OIG Tr. 14:15-16. At no time did any CPD officers attempt to provide aid or comfort McDonald—Murphy stated, “That’s why I felt that I needed to go up to him.” Murphy OIG Tr. 14:11-12.

After McDonald passed away, Murphy got up from beside him and noticed the shooting officer, who he now knows to be Van Dyke, “pacing back and forth in front of his car.” Murphy OIG Tr. 15:7-8. Murphy approached him and told him to sit down and drink water. As he was speaking with Van Dyke, Murphy “heard several officers telling [Van Dyke] to call your union rep, call your union rep.” Murphy OIG Tr. 15:16-17.

Murphy and Pasqua departed after approximately ten minutes on the scene when a CPD sergeant told them CPD did not need their assistance. At the time they left, there was “[a] sea of CPD” on scene. Murphy OIG Tr. 38:3; Pasqua OIG Tr. 25:7-8.

A. McElligott’s Statements Regarding the McDonald Shooting

1. October 20, 2014 Statement to Detective David March²²

On March 15, 2015, Detective David March submitted a case supplementary report (CSR) with the R.D. Number HX475653 that contains a summary of CPD’s investigation.²³ Lieutenant

²⁰ In a January 22, 2016 OIG interview, CPD Area North Commander Kevin Duffin stated CPD police officers have a duty to render aid to injured civilians per general orders. Police officers render aid by calling dispatch and requesting that an ambulance be dispatched to the scene. According to Duffin, police officers are not required or expected to provide any more assistance than this. On March 30, 2016, CPD issued General Order G03-06 which requires that the involved member(s) “request medical attention for the injured, and also offer immediate medical aid commensurate with their training, experience, and available equipment.”

²¹ The Medical Examiner’s Case Report states McDonald was pronounced dead “on view” at Mount Sinai Medical Center on October 20, 2014, at 10:42 p.m. OIG 15-0564 015029.

²² OIG 15-0564 003068-69.

²³ CPD’s investigation in the aftermath of the McDonald shooting was reported under record number HX-475653, and most reports were classified as an investigation into an aggravated assault in which McDonald was the offender. In a few reports, the case was classified as an investigation into a justifiable homicide of which McDonald was the victim. An additional record number was also created and classified as a justifiable homicide, apparently for recordkeeping purposes. In CPD’s investigative reports classified under the aggravated assault, CPD personnel

Anthony Wojcik approved the CSR on March 16, 2015. Included in that CSR is a summary of the statement that March obtained from McElligott at the scene of the shooting (referenced in part above in Section IV.B.2). Regarding his observations as McDonald reached Pulaski, McElligott stated the following:

When McDonald ran eastbound through the parking lot of the Burger King, Officer McElligott ran after McDonald in pursuit. McElligott ran out into the middle of Pulaski Road in pursuit of McDonald. McElligott heard multiple gunshots but did not see who fired the shots. The gunfire was continuous, one shot after another. McElligott then saw McDonald lying on the ground. McElligott saw Officer Joseph Walsh kick the knife out of McDonald's hand.²⁴

2. October 21, 2014 Statement to IPRA²⁵

On October 21, 2014, at 4:36 a.m., IPRA investigator Brian Killen interviewed McElligott at Area Central Police Headquarters, located at 5101 South Wentworth, regarding the McDonald shooting.²⁶ Attorney Dan Herbert and FOP Field Representative Kriston Kato accompanied McElligott. In summary, regarding his observations as McDonald reached Pulaski, McElligott stated the following.

As McElligott approached Pulaski, several squad cars were also approaching the area. One squad car traveling northbound on Pulaski started to do a U-turn, and McElligott stopped running to let the squad car pass. McElligott then stated: "And at that point [McDonald] turned around he, he's goin' um southbound slowly so I know they're, they're stopping right there. I hear the shots at that point. And uh when I approach I think I was running down maybe the middle that's when I saw the offender layin' on the ground." McElligott IPRA Tr. 9:31-10:5. McElligott then saw Walsh kick the knife out of McDonald's hand.

B. Records and Interviews Concerning 815R's In-Car Video System

On October 21, 2014, CPD Sergeant Lance Becvar submitted a supplementary report for R.D. No. HX475653 concerning his retrieval of video from the in-car video systems of the five CPD vehicles that were on-scene when Van Dyke shot McDonald.²⁷ With respect to 815R (also referred to as vehicle 8489), the vehicle in which McElligott was the passenger on October 20,

drew conclusions about the propriety and lawfulness of Van Dyke's shooting of McDonald. This raises questions about CPD's role in investigating a police-involved shooting in light of IPRA's jurisdiction over the matter.

²⁴ Detective March completed a General Progress Report (GPR) relating to his interview of McElligott that contains March's handwritten notes of the interview. OIG 15-0564 003247. March's handwritten notes of the interview do not differ in any significant way from the summary of McElligott's statement in the CSR.

²⁵ OIG 15-0564 000482-98.

²⁶ See also *supra* Section IV.B.2.

²⁷ OIG 15-0564 004991.

2014, Becvar noted “Operational but due to disc error no video recorded.”²⁸ Becvar also completed a corresponding “In Car Camera Video Retrieval Worksheet” regarding his October 20, 2014 video retrieval, in which he made the following notation with respect to 815R: “Processing video: extremely large video file.”²⁹ On July 17, 2015, Becvar sent an email summarizing his findings regarding his October 20, 2014 video retrieval from 815R and the other four CPD vehicles that were on scene when Van Dyke shot McDonald.³⁰ With respect to 815R, Becvar wrote as follows: “System not engaged because a very long video (like hours long) was made previous to this event/incident and the system was processing that video and unable to start another video.”³¹

The in-car dash camera video recovered from 815R captured footage from 10:03:14 p.m. to 10:04:18 p.m.—after McDonald was shot—and only another squad car with flashing lights is visible.³² There is no sound on the video. The video does not display notations of “M1” or “M2” reflecting functioning microphones. In a January 27, 2016 OIG interview, Becvar stated that if a vehicle’s microphones were synced and functioning, its in-car video display and the recovered video would both show an on-screen “M1” (driver mic) and an “M2” (passenger mic). Becvar’s statement is corroborated by the in-car video system user manual, which establishes that officers are able to see “M1” and “M2” displayed on their in-car video system in real time as it is recording if the microphones are properly connected.³³ The user manual further reflects that the in-car video system display contains a “camera preview” that “displays the image as seen through the camera lens. The default image is set as the front facing camera.”³⁴

C. OIG Interview of McElligott

On April 21, 2016, pursuant to Section 6.1 of the CBA between CPD and FOP, OIG, through CPD’s Bureau of Internal Affairs, served McElligott with a Notification of Interview, Notification of Allegations, and copies of his prior statements, including: (1) his October 20, 2014 statement to Detective March, contained in the March 16, 2015 CSR; (2) March’s GPR containing his handwritten notes of his interview of McElligott; and (3) McElligott’s October 21,

²⁸ OIG 15-0564 004991.

²⁹ OIG 15-0564 004992.

³⁰ OIG 15-0564 000567.

³¹ OIG attempted to obtain the Supervisor’s Management Log from October 21, 2014, but CPD informed OIG that the log had been destroyed prior to the commencement of OIG’s investigation. Supervisor Management Logs are completed by shift supervisors, usually a sergeant, and list the personnel and assignments for a shift and whether the in-car camera was operable or inoperable.

³² On October 20, 2014 at 9:38 p.m., 815R sent Franko a PDT message stating, “8489 cam working.” See OEMC PDT Messages. OIG 15-0564 000171.

³³ See Coban Mobile Recorder User Manual. OIG 15-0564 008973.

³⁴ OIG 15-0564 008972.

2014 statement to IPRA. In addition, OIG provided McElligott with the dashcam footage from 813R and 845R and the security camera footage from Dunkin' Donuts.

On May 9, 2016, OIG investigators interviewed McElligott under oath after informing him of his administrative advisements orally and in writing. McElligott provided oral and written acknowledgement of the reading of those advisements. The interview was transcribed by a certified court reporter. McElligott's attorney was also present for the interview.

In summary, McElligott stated as follows. As of October 20, 2014, McElligott was assigned to CPD's 8th District and was working with Gaffney, one of his regular partners.

1. The Scene of the Shooting

Immediately after McDonald was shot, McElligott stated he and the other officers on scene waited for an ambulance to arrive. McElligott recalled that his sergeant, Stephen Franko, arrived on the scene within minutes of the shooting. McElligott did not recall speaking with anyone on the scene about the shooting besides the detectives. He did not know the names of the two detectives who interviewed him. He stated, "I know I gave basically an on-scene interview, which was written down in notes on the hood of our squad car . . ." McElligott OIG Tr. 48:9-11. McElligott and Gaffney were standing next to each other when they gave their statements. Franko may have been "lingering in and out" while they were speaking to the detectives. McElligott OIG Tr. 51:11. A couple of minutes after they gave their statements, McElligott and Gaffney accompanied the detectives to where they first encountered McDonald and gave another run through of their encounter with McDonald. The detectives checked to see if any cameras caught the incident.

McElligott reviewed the statements attributed to him in the March 16, 2015 CSR summarizing his interview with Detective March. McElligott stated the statement is a "shortened summary" of what he told the detectives. McElligott OIG Tr. 92:6-7. He stated: 'There's seconds missing. I was at the light. I waved a car ahead of me, and it did a U-turn in front of me. I heard the shots, and then after I started hearing the shots and saw that traffic was being blocked—because I believe 821 Robert completely cut off traffic at 40th Place, I think it is.' McElligott OIG Tr. 92:19-93:1. McElligott did not see Van Dyke shoot McDonald. He explained:

I was facing northbound when I first heard the shots. I was stopped at the light. There were squad cars coming at me and turning around. And the Mars lights that we have now are so bright that you can't see very far ahead or next to them. One drove by me. I couldn't see their VIN tag if I wanted to because they're just so bright. And I was approaching the scene while shots were being made.

McElligott OIG Tr. 95:13-21.

After speaking with the detectives, an evidence technician came to recover their tire and take photographs of their squad car. At some point, someone came to download 815R's dashcam video. McElligott stated the individual who came to download their video was "mumbling and cussing under his breath." McElligott OIG Tr. 58:7. McElligott explained, "It's like because he

couldn't—like, he was fumbling with the video or something with—I don't know if he was having a hard time with it or if he didn't know what was going on with it, but I remember him being mad." McElligott OIG Tr. 58:21-59:2.

2. Area Central

McElligott and Gaffney drove to Area Central in their squad car approximately four or five hours after the shooting. McElligott believed they arrived at Area Central after all of the other officers who witnessed the shooting. He did not speak with any of the other officers regarding the shooting. At Area Central, an evidence technician finger printed and photographed McElligott. At some point, McElligott saw detectives watching the Dunkin' Donuts video with Van Dyke and Walsh. He stated he watched the video over the detectives' shoulders, but "didn't see very much." McElligott OIG Tr. 71:20. McElligott recalled the detectives pointing out that Walsh or Van Dyke were backpedaling. McElligott said he was not required to fill out an Officer's Battery Report or Tactical Response Report because the detectives and Franko said he "wasn't considered to be a victim." McElligott OIG Tr. 75:18. McElligott then waited to give his statement to IPRA. McElligott left Area Central a couple of hours after McElligott gave his statement to IPRA.

3. Use of 815R's In-Car Video System

McElligott had used vehicle 8489 several times before October 20, 2014. On that date, the car had a dashcam system. He reviewed CPD Special Order S03-05 outlining the protocol for in-car video systems. McElligott reviewed the provision in the order stating members must "obtain the remote transmitter/audio recorder and ensure it is securely attached to the member's person." McElligott OIG Tr. 117:18-20. When asked if he did that on October 20, 2014, McElligott stated, "We did not attach the audio recorder to our person." McElligott OIG Tr. 118:1-2. He did not recall doing anything with the microphones upon entering his vehicle. When asked if he is supposed to report if the audio is not functioning in the system, McElligott stated: "I would think so, yes. I don't recall specific times I've notified anybody about the audio." McElligott OIG Tr. 126:22-24. McElligott noted that there used to be holders for the microphones to clip on to their uniforms, but CPD no longer provided them.

McElligott noted that he and Gaffney checked the camera on October 20, 2014 at the start of their tour and it was operational. They were able to log in to the system. McElligott was unable to explain why there was an hours long video that was unable to be processed.

V. ANALYSIS

OIG's investigation established that McElligott violated CPD Rule 6 (disobedience of an order, namely S03-05) and Rule 11 (incompetency in the performance of a duty) by failing to audibly record events with his in-car video system. Accordingly, OIG recommends that CPD impose discipline upon McElligott commensurate with the seriousness of his misconduct, his discipline history, and department standards.

As McElligott acknowledged, CPD did not recover any audio from 815R's in-car video system. Additionally, CPD recovered only one minute of video from 815R's system after the McDonald shooting. With respect to the video, Sergeant Becvar noted that the in-car video system was not engaged due to a disc error while processing a very long video, and there is no evidence that McElligott knew of the error. McElligott stated that he and Gaffney checked the camera at the start of their tour and found it operational. With respect to the audio, however, McElligott admitted that he did not attach the microphones to his person. 815R's dashcam video further reflects that McElligott and Gaffney did not connect their microphones to 815R's in-car video system because there is no "M1" or "M2" symbol visible at the top of the video footage from October 20, 2014 as there would have been if the microphones were connected. Thus, the evidence demonstrates that on October 20, 2014, McElligott failed to follow the in-car video system procedures set forth in S03-05.

McElligott's failure to follow CPD's in-car video system protocols prevented CPD from collecting potentially important, objective, technology-based evidence of the McDonald shooting. As a result, investigators are now forced to rely on McElligott's subjective unrecorded oral account of the shooting. McElligott's violation of CPD rules, also served to harm the relationship between CPD and the residents it serves. A functioning in-car video system is critical to CPD's efforts to maintain accountability for its officers. That accountability, in turn, fosters the public's trust in CPD. When accountability mechanisms fail, as they did in the present case, where only one of the five CPD vehicles present at the shooting captured video of the actual shooting and none of those vehicles captured audio, the public can lose faith in CPD's commitment to accountability. Thus, as CPD works to rebuild the relationship between its officers and the greater Chicago community, it must ensure that its personnel understand the importance of keeping all aspects of CPD's accountability framework, including in-car video systems, functional.

VI. RECOMMENDATION

OIG recommends that CPD impose discipline upon McElligott commensurate with the seriousness of his misconduct, his discipline history, and department standards.

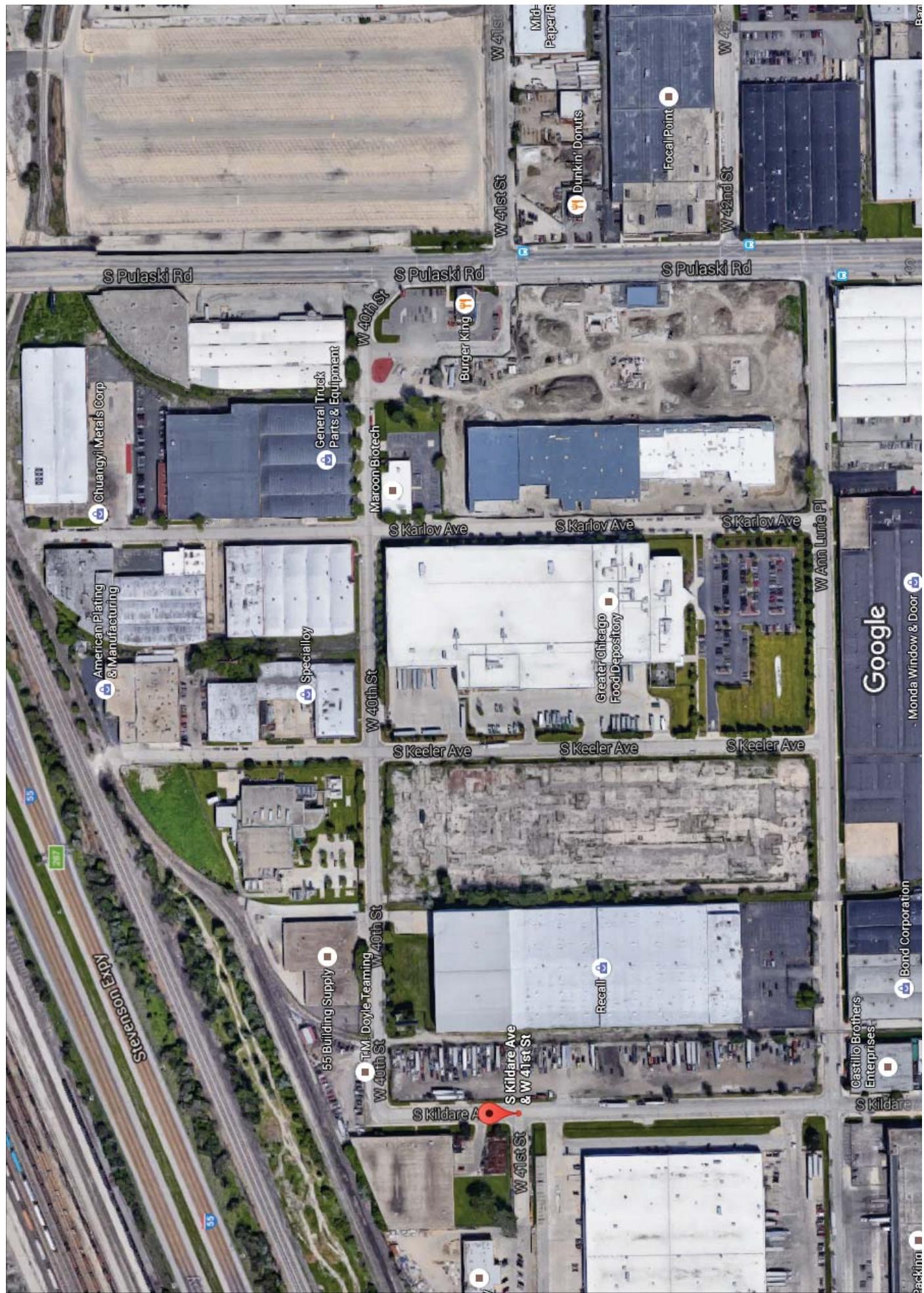
VII. CPD RULE VIOLATIONS

Rule 6 Disobedience of an order or directive, whether written or oral.

Rule 11 Incompetency or inefficiency in the performance of duty.

Appendix A

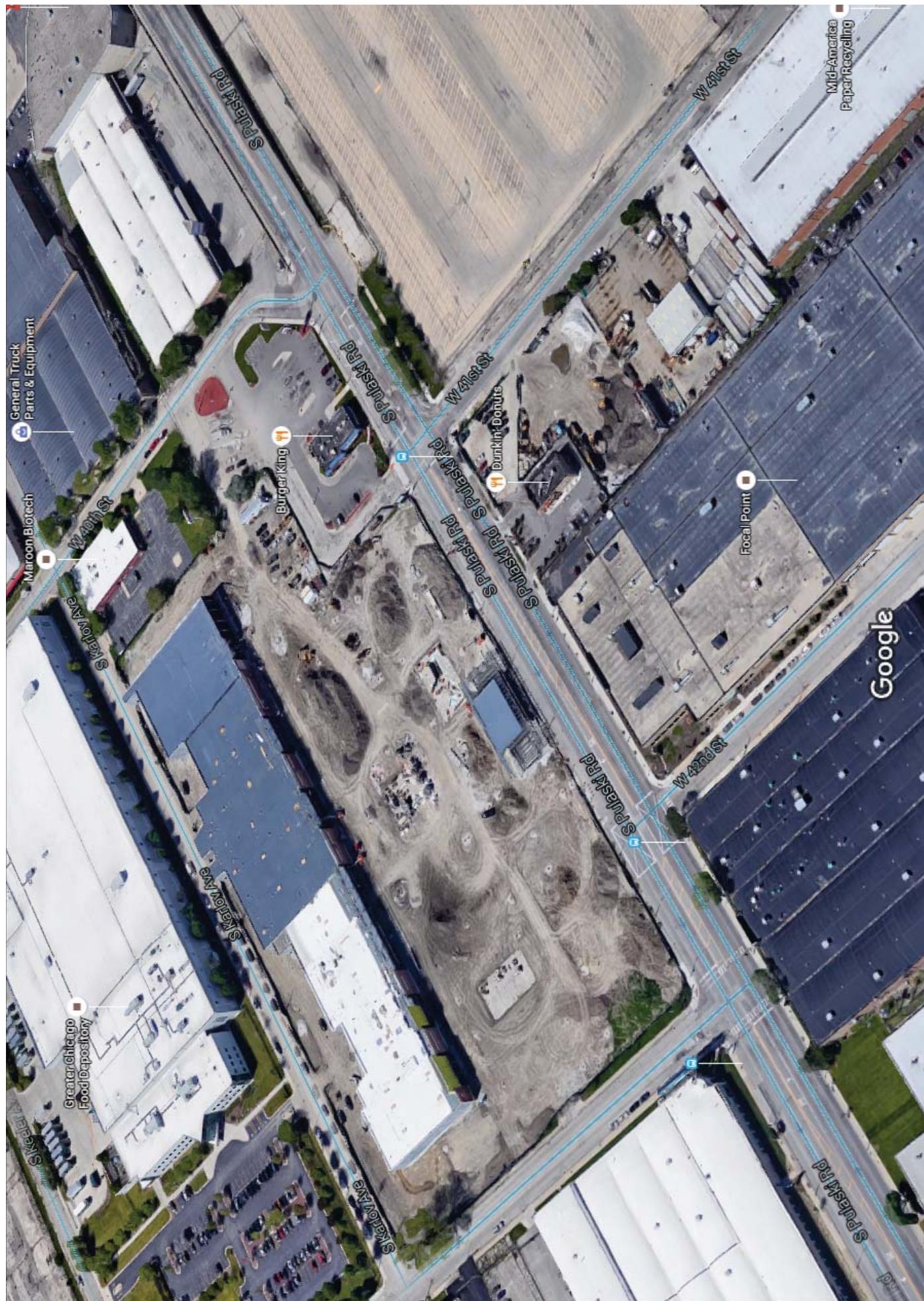
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